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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,573	10/28/2003	Frederick James Diggle III	BEI-0016US	5326
49584	7590	06/21/2005		
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			EXAMINER BOCHNA, DAVID	
			ART UNIT 3679	PAPER NUMBER

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,573

Applicant(s)

DIGGLE, FREDERICK JAMES

Examiner

David E. Bochna

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3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 12/12/03 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered. A copy of the Patent application with express mail label EU990163769US must be supplied. Applicant stated that a copy of the application was submitted with the 3/30/05 response, however there is no copy of the application in the file.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, and 4-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ready.

In regard to claim 1, Ready discloses a body member 16 having a first end 13 and a second end 12, wherein the body member defines an opening (opening in 13 for bolt 13) proximate a first end 13 of the body member 16; and

a support member 23 extending away from the body member at a point intermediate of the first end and the second end (support 23 is inside the first end 13 and inside the second end 12).

In regard to claim 2, wherein the pipe holder 16 is fabricated from a metal.

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In regard to claim 4, wherein the opening (hole for bolt 32) is a circular-shaped opening.

In regard to claim 5, wherein the body member defines a second opening (hole in flanged surface 12 and the hole in the flange directly below the flange 12, which accepts bolt 17).

In regard to claim 6, wherein the second opening is a threaded opening (see col. 1, lines 55 and col. 2, lines 56-57).

In regard to claim 7, the second opening (hole for bolt 17) is positioned between the support member 23 and a second end (top outer surface of 12) of the body member 16.

In regard to claim 8, wherein the body member further includes a hook portion (extension 19) proximate a second end 12 of the body member.

In regard to claim 9, wherein the support member 23 extends perpendicularly from the body member (the body member extends from 12 down to 28 where the support member extends left to right).

In regard to claim 10, wherein the support member defines a third opening (hole for bolt 25).

In regard to claim 12, wherein the support member includes a hook portion 27 proximate a second end of the support member.

4. Claims 13-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Maloney.

In regard to claim 13, Maloney discloses a ladder 20 (see col. 3, line 24), comprising:

A first and second side rails 22;

a cross member 26 connected to the first and second side rails; and

a pipe holder 10 connected to the cross member, wherein the pipe holder includes:

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a body member 10, wherein the body member having a first end and a second end, wherein the body member 10 defines an opening 54 proximate a first end of the body member; and

a support member 18 extending approximately perpendicularly from the body member at a point intermediate of the first end and the second end.

In regard to claim 14, wherein the pipe holder is removeably connected to the cross member.

In regard to claim 15, wherein the pipe holder is removably connected to the cross member with a set screw 124 (see fig. 7).

In regard to claim 16, wherein the pipe holder is removably connected to the cross member with an elastic hook 224 (see fig. 8).

In regard to claim 17, wherein the pipe holder is fixedly connected to the cross member.

In regard to claim 18, wherein the pipe holder is fixedly connected to the cross member with a fastener 218, 224.

In regard to claim 20, Maloney discloses a ladder 20, comprising:

first and second side rails 22;

a cross member 26 connected to the first and second side rails; and

a pipe holder 10 connected to the cross member, wherein the pipe holder includes:

a body member 10 having a first end and a second end, wherein the body member includes means 58 for allowing a length of pipe pass therethrough; and

a support member 18 extending away from the body member at a point approximately midway between the first end and the second end.

Claim Rejections - 35 USC § 103

5. Claims 1, 5, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appleton.

In regard to claim 1, Appleton discloses a body member (10 and 26 together) having a first end 13 and a second end 26, wherein the body member defines an opening (opening created by curved surfaces 15 and 16) proximate a first end 13 of the body member (10 and 26); and a support member (horizontal bottom of c-shaped portion 26 that has the hole 20) extending away from the body member (bottom horizontal flange with hole 20 is perpendicular to the vertical surface of 26 that has the other hole 20) at a point intermediate of the first end 13 and the second end 26. Appleton does not disclose that the body member 10 and 26 is one integral piece, however, it would have been obvious to one of ordinary skill in the art to make pieces 10 and 26 as one because One-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohn, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

In regard to claim 5, wherein the body member defines a second opening (hole 20 in vertical surface of 26).

In regard to claim 10, the support member (horizontal bottom flange with hole 20) defines a third opening 20.

In regard to claim 11, the third opening 20 is a threaded opening.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ready. Ready discloses a pipe holder made of metal, but not plastic. However, it would have been obvious to make the pipe holder out of plastic because the selection of a known material based

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upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney. Maloney discloses a pipe holder as described above, but does not disclose that it is integral. However it would have been obvious to make the pipe holder integral because one-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

Response to Arguments

8. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. The prior art of Ready, Appleton and Maloney have been applied in a different way in response to the amendments to claim 1, 13 and 20.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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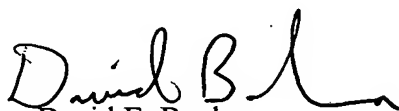
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078.

The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David E. Bochna", with a stylized flourish at the end.

David E. Bochna
Primary Examiner
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